

12 OCT 2000



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office

Patent Cooperation Treaty
Legal Office

Address: Assistant Commissioner for Patents
Box PCT
Washington, D.C. 20231

Aldo J. Test
FLEHT HOHBACH TEST
ALBRITTON & HERBERT LLP
Suite 3400, Four Embarcadero Center
San Francisco, CA 94111-4187

In re Application of
Philippe J. GOIX
Application No.: 09/600,021
PCT No.: PCT/US98/11958
Int. Filing Date: 09 June 1998
Priority Date: 09 June 1997
Attorney's Docket No.: A-69293/AJT
For: Method and Apparatus for Detecting
Microparticles in Fluid Samples

:
:
: DECISION ON
:
: PETITION UNDER
:
: 37 CFR 1.137(b)
:
:

This is in response to the "Petition for Revive Unintentionally Abandoned Patent Application 37 CFR § 1.137(b)" filed on 07 July 2000.

BACKGROUND

On 09 June 1998, this international application was filed, claiming an earliest priority date of 09 June 1997.

On 31 December 1998, a Demand electing the United States was filed in this international application. Accordingly, the deadline for paying the basic national fee in the United States under 35 U.S.C. 371 and 37 CFR 1.495 was 09 December 2000. This international application became abandoned with respect to the United States at midnight on 09 December 2000 for failure to pay the required basic national fee.

On 07 July 2000, applicant filed in the United States Patent and Trademark Office (PTO) the instant petition and a transmittal letter for entry into the national stage in the U.S. under 35 U.S.C. 371, which was accompanied by, *inter alia*, a U.S. basic national fee, the copy of the international application, and oath or declaration. The U.S. basic national fee of \$48.00 (small entity status), however, is deficient because the claims did not meet PCT Article 33(1)-(4). Accordingly the proper basic national fee is \$335.00 and the difference, \$287.00, has been charged to applicant's Deposit Account No. 06-1300 as authorized on the transmittal letter date 07 July 2000.

DISCUSSION

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20 (d)) required pursuant to paragraph (c) of this section.

Applicant's statement that "Abandonment of this application was unintentional, and the necessary responses are being submitted with this petition" is being construed as a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. Petitioner must notify the Patent and Trademark Office if such an interpretation of the statement in the petition is not correct. Thus, the statement in the petition is being accepted in satisfaction of 37 CFR 1.137(b)(3).


Moreover, petitioner has provided: (1) the proper reply by submitting the basic national filing fee, and (2) the petition fee set forth in § 1.17(m). In this application, no terminal disclaimer is required.

Accordingly, the petition is deemed to satisfy requirements (1), (2), (3) and (4) under 37 CFR 1.137(b).

DECISION

The petition under 37 CFR 1.137(b) is **GRANTED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing, including the preparation and mailing of a Notification of Acceptance (Form PCT/DO/EO/903). The 35 USC 102(e) and 35 USC 371 date of this application is **07 July 2000**.



Leonard Smith
PCT Legal Examiner
PCT Legal Office

Rafael Bacares
PCT Legal Examiner
PCT Legal Office
Tel: (703) 308-6312
Fax: (703) 308-6459